

WILMERHALE

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July 2, 2012

By Hand

The Honorable Denise L. Cote
United States District Court
Southern District of New York
500 Pearl Street, Room 1610
New York, NY 10007

MEMO ENDORSED

11 Civ 6036 (DLC)

Re: *Eastman Kodak Company v. Asia Optical Co. Inc.*, 12-cv-246 (DLC)

Dear Judge Cote:

I am counsel for Eastman Kodak Company in the above referenced matter. A damages trial in this case is scheduled for July 23, 2012. As explained below, in light of recent discovery responses submitted by defendant Asia Optical Co., Inc. ("AO"), Kodak believes that this matter can and should be resolved without the need for a trial.

On March 16, 2012, the Court granted Kodak's Partial Motion for Summary Judgment Concerning Contract Interpretation, finding that AO is required under the parties' patent license agreement to pay royalties to Kodak on its sales of digital cameras to Fujifilm. (Dkt. 79.) The Court instructed the parties to conduct damages discovery and set a damages trial for July 23. During discovery, AO conceded in interrogatory responses that it owes at least \$33,726,531 in damages. This amount includes unpaid royalties on AO's sales to Fuji as well as interest that AO concedes is due under the license agreement on those unpaid royalties. Kodak agrees that this is the correct damages amount. Because there is no dispute as to the amount of damages, the parties agreed to work out a damages stipulation in lieu of a damages trial. Kodak sent AO a proposed stipulation on June 22. Despite Kodak's repeated requests and the fact that trial is now scheduled to begin in just three weeks, AO has not responded or taken any steps to finalize the stipulation.

If it is acceptable to the Court, Kodak is now prepared to file a motion for summary judgment of damages based on AO's admissions in its damages discovery responses. This would avoid the need for a trial and would allow for an efficient resolution of this case. A settlement conference with Magistrate Judge Gorenstein is scheduled for Wednesday, July 11. If the parties are unable to reach a resolution at the settlement conference, Kodak would be prepared to file its motion for summary judgment on July 13, 2012. We respectfully request the Court to permit Kodak to file this motion.

Kodak is available for a telephone conference if the Court would like to discuss this issue further.

The pretrial order remains due 7/13/12. The case remains on the July 23 trial calendar.

*Denise Cote
July 9, 2012*

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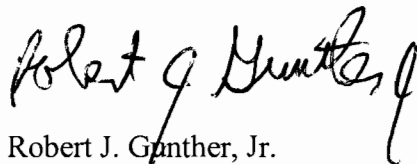
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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert J. Gunther, Jr.", written in a cursive style.

Robert J. Gunther, Jr.

cc: The Honorable Gabriel W. Gorenstein (by hand)
Devan V. Padmanabhan (by email)
Sri K. Sankaran (by email)
Mark S. Sullivan (by email)
Michael J. Summersgill (by email)
Jordan L. Hirsch (by email)
Jonathan W. Woodard (by email)